

Notice of Allowability

Application No.

09/923,116

Examiner

Emily Le

Applicant(s)

MCKAY, WILLIAM F.

Art Unit

1648

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 10/30/2007.
2. ☒ The allowed claim(s) is/are 43-47, 49, 52- 56, 58-60, 62-64, 68 and 73-74.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application |
| 2. <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Kenneth Gandy on 01/23/2008.

The application has been amended as follows:

Claim 43, lines 3-4, the recitation "said device exhibiting sufficient flexibility to be rolled up on itself when hydrated" is amended to "said device exhibiting sufficient flexibility to be rolled up when hydrated"; line 8, the recitation "particulate biocompatible mineral; and" is amended to "particulate biocompatible mineral, said resorbable sponge matrix having been prepared by a process comprising freeze-drying a slurry including the collagen and particulate biocompatible mineral; and"; and lines 11-12, the recitation "such an amount as to stimulate the osteoclasts sufficiently to case" is amended to "an amount to stimulate the osteoclasts to cause".

Claim 44, line 1, the recitation "The device of claim 43 wherein" is amended to "The osteogenic sponge composition of claim 43, wherein".

Claim 45, line 1, the recitation "The device of claim 43 wherein" is amended to "The osteogenic sponge composition of claim 43, wherein".

Claim 46, line 1, the recitation "The device of claim 45 wherein" is amended to "The osteogenic sponge composition of claim 45, wherein".

Claim 47, line 1, the recitation "The device of claim 46 wherein" is amended to "The osteogenic sponge composition of claim 46, wherein".

Claim 52, lines 1-2, the recitation "claim 43 wherein" is amended to "claim 43, wherein".

Claim 60, lines 4-5, the recitation "said device exhibiting sufficient flexibility to be rolled up on itself when hydrated" is amended to "said device exhibiting sufficient flexibility to be rolled up when hydrated"; line 8, the recitation "bone; and" is amended to "bone; wherein said resorbable sponge matrix has been prepared by a process comprising freeze-drying a slurry including the collagen and particulate biocompatible mineral; and"; and lines 13-14, the recitation "such an amount as to stimulate the osteoclasts sufficiently to cause" is amended to "an amount to stimulate the osteoclasts to cause".

Claim 62, line 1, the recitation "The device of claim 60" is amended to "The osteoinductive composition of claim 60".

Claim 63, line 1, the recitation "The device of claim 62" is amended to "The osteoinductive composition of claim 62".

Claim 64, line 1, the recitation "The device of claim 63" is amended to "The osteoinductive composition of claim 63".

Claim 73, lines 11-12, the recitation "said device exhibiting sufficient flexibility to be rolled up on itself when hydrated" is amended to "said device exhibiting sufficient flexibility to be rolled up when hydrated"; and lines 15-16, the recitation "such an amount

as to stimulate the osteoclasts sufficiently to cause" is amended to "an amount to stimulate the osteoclasts to cause".

Claim 74, lines 11-12, the recitation "said device exhibiting sufficient flexibility to be rolled up on itself when hydrated" is amended to "said device exhibiting sufficient flexibility to be rolled up when hydrated"; lines 11-12, the recitation "said resorbable sponge matrix" is amended to "said device"; and lines 15-16, the recitation "such an amount as to stimulate the osteoclasts sufficiently to cause" is amended to "an amount to stimulate the osteoclasts to cause".

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Emily Le whose telephone number is (571) 272 0903. The examiner can normally be reached on Monday - Friday, 8 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce R. Campell can be reached on (571) 272-0974. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Application/Control Number:
09/923,116
Art Unit: 1648

Page 5

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Emily M. Le/
Patent Examiner
Art Unit 1648

/E.Le/